

## Indiana Public Defender Commission Meeting Minutes

April 6, 2006

Chairman Norman Lefstein called the meeting to order at 3:17 p.m. Commission members attending were: Mr. Les Duvall, Rep. Ralph Foley, Ms. Monica Foster, Ms. Bettye Lou Jerrell, Sen. Timothy Lanane, and Sen. Joseph Zakas. Also attending was Larry Landis of the Indiana Public Defender Council, Michael Murphy and Deborah Neal, Staff Counsel for the Commission, and Amber Holland, recording secretary.

Robert Rittman, Grant County Managing Public Defender, H. Joseph Certain, Grant County Public Defender Board President and Judge Gary Thompson, Grant County Public Defender Board member also attended. Members not attending were: Ms. Susan Carpenter, Hon. Daniel Donahue and Rep. Bob Kuzman.

- 1) **Introduction of new staff members:** Chairman Lefstein began the meeting by introducing Deborah Neal, Assistant Staff Counsel for the Commission. Amber Holland was also introduced as the new Administrative Assistant to the Commission.
- 2) **Approval of Commission Minutes from the December 15, 2005 meeting:** Rep. Ralph Foley made the motion for approval of the minutes. Sen. Timothy Lanane seconded the motion, and the motion carried.
- 3) **Mr. Robert Rittman, Grant County Managing Public Defender:** Mr. Rittman and his colleagues attended the meeting to ask the Commission to reconsider Grant County's denied reimbursement from the 3<sup>rd</sup> quarter 2005. Mr. Rittman explained that he was aware of the new standardized forms the Commission began using beginning with the 3<sup>rd</sup> quarter of 2005, however, he did not have the software required to access these forms. Therefore, he used forms that had previously been approved by former Staff Counsel Bob Borgmann. The Grant County Public Defender Board did not realize the use of these forms would be problematic until they received a copy of the suggested reimbursement indicating that the reimbursement would be reduced. The reason given for the denial was "no spreadsheet." The Grant County Public Defender Board hired someone with the correct program to help produce the new forms, however, by the time they resubmitted the forms the deadline had passed.

Mr. Rittman explained that Grant County has never been late in filing a request. Mr. Rittman stressed that he understands the need for a standardized system, but the punishment Grant County received is excessive and could cause harm to the Grant County Public Defender program. Mr. Rittman again asked the Commission to reconsider their request for denied reimbursement.

Hon. Thompson thanked the Commission for addressing the problem with Grant County, but also asked the Commission to consider establishing a method for "ironing out these administrative or technical glitches." He stated that this problem had upset the Grant County Council, and they had considered rescinding the Public Defender Ordinance. Chairman Lefstein thanked Mr. Rittman, Hon. Thompson and Mr. Certain for coming to the meeting and stated that the Commission would consider the suggestions they had offered. Mr. Lefstein explained that the Commission is currently in a transition period and that they are aware of problems, but the situation is improving.

Ms. Monica Foster moved to reconsider and pay Grant County in full. Sen. Lanane seconded the motion, and the motion carried.

#### **4) Requests for Reconsideration of Denied Reimbursements in the Third Quarter:**

Chairman Lefstein explained that a number of counties had been denied or penalized in the third quarter. Monica Foster expressed her concern that the decisions seemed to base on “form over substance”, and that the Commission should be doing more to help counties provide more effective counsel. Counsel Murphy reminded the Commission of comments from early meeting minutes that the “direction of the Commission should not be toward funding of the status quo.” Chairman Lefstein commented that the form is relevant to the caseload issue since the Commission has been “flying blind for years.” The Commission has made a decision to require counties to report on the forms, with time restrictions and penalties for not complying. Since the Commission has clearly spelled out what the expectations are, and that there will be penalties, compliance is at a level it has never been before. Furthermore, the counties have been given adequate notice regarding the reporting requirements. Since the standards are developed on caseloads, it is important to find out the truth. Ms. Jerrel asked about the cost of the Excel program, explaining that it is a reasonable expectation for counties to use the required program to receive funds, and if they don’t, or if they are late, the Commission will manage to the degree it can. Counsel Murphy reported that several of these cases have been primarily resolved prior to the meeting requiring only Commission approval. The summary is as follows:

- a. Greene – Has been resolved. They are being paid the money.
- b. Lake – Has been resolved.
- c. LaPorte – Has been resolved and removed their request for reconsideration because they understood their mistake.
- d. Montgomery – Has been resolved. There was not a first page on the report. There was also no total on the form, so there was no way to understand what it was.
- e. Noble – Has been resolved. They were under the impression that they had been deducted for misdemeanors, but should have stated “others” category. Larry Landis offered this situation as an example of the frustration level felt by more than one Chief Public Defender. Without an explanation as to the nature of a reduction, the Chief cannot explain the reduction to the County board. Counsel Murphy indicated the misrepresentation had been explained in a phone call, and that as a result of Mr. Landis’s feedback, greater care would be taken to insure satisfactory explanations of Commission decisions would occur in similar situations. Ms. Jerrel asked about the variety of cases reported as “Others.” Counsel Neal described the informal phone survey conducted to determine the nature of the cases included in this category. A chart was provided to indicate the diversity of the types of cases that the counties include. Counsel was asked to provide a guideline to direct counties on the appropriate cases to include in the other category, and how to deal with violations of probation cases.

Rep. Foley made a motion to approve resolutions for Greene, Lake, LaPorte, Montgomery and Noble Counties, and Monica Foster seconded the motion. The motion carried.

- f. Steuben – Steuben County fired their Public Defender Board Chair, but a new one is in place. They were struggling with whether they were going to remain in the program. However, they are going to continue. They also submitted the wrong forms.

After a discussion, in which Ms. Foster indicated the Commission should be doing everything it can to keep counties in the program, Sen. Lanane made a motion to approve the resolution for Steuben County. Monica Foster seconded the motion, and the motion carried.

- g. Washington - Auditor was overloaded by office manager's absence due to a medical issue.

Again, after a discussion, Sen. Lanane made a motion to approve the resolution for Washington County; Monica Foster seconded the motion, and the motion carried.

- h. Decatur – Decatur County claims they did not receive the letter regarding the use of the new standardized forms. Counsel Murphy explained that he has used the same mailing list and all of the Public Defender Board Members were on the list, and they have received the letter indicating denial of reimbursement.

Sen. Lanane moved to approve Decatur County's request for reconsideration and that the vote be in accordance with Ms. Foster's resolution that it pass by the narrowest of margins. Ms. Foster seconded the motion and the motion carried by a narrow margin. The approval comes with a strong admonition that the county needs to comply with the Public Defender Commission guidelines.

- i. Miami – As a result of Commission action, Miami County was sent a letter dated October 3, 2005, explaining that the monies they received from the 2<sup>nd</sup> quarter would be the last they would receive until they fixed their non-compliance with the Comprehensive Plan concerning a Chief PD. The County had two non-legal staff personnel interviewing clients, assigning cases and handling files. A chief public defender was not appointed until January. Mr. Landis cited IC 33-47-11, which requires notice of 90 days which was not given, and that the county has had a long struggle to get into compliance. According to Mr. Landis, to now punish them would be sending the message that the Commission does not care about what they did, or what they were supposed to do. Ms. Foster stated that the Commission needs to send the 90-day notice when a county is not in compliance as quickly as possible. Sen. Lanane made a motion to approve Miami County's request. Monica Foster seconded the motion, and the motion carried.
- j. Whitley – The County claims that the Public Defender Commission did not inform them of the reporting deadline for the last seven quarters. Whitley County would like the Commission to consider reimbursement for the last quarter or all of 2005. However, the Commission has no way of knowing if the county has been in compliance because they have not submitted the forms. If a county does not report on a regular basis then the Commission can lose control over caseload monitoring. It was decided that a staff member would visit Whitley County and advise them on how to resume submission. It was also a consensus that the belated claims would be considered once the staff had reported on the visit with Whitley County.
- k. Marion – It was decided at the last meeting that the Commission would approve the reimbursement for Marion County subject to them submitting a report on caseloads. They did complete a spreadsheet, but final payment has not been made. Furthermore, there are still questions about caseload compliance. Chairman Lefstein explained that before a decision is

made regarding the 3<sup>rd</sup> quarter reimbursement (and, therefore, the 4<sup>th</sup> quarter reimbursement) Marion County Chief Public Defender, David Cook, should have the opportunity to come and speak with the Commission regarding these issues.

- 5) **Discussion of “Others” Category:** Debby explained that she had conducted a study to find out how counties use the “others” category. She prepared a spreadsheet of her findings, which was included in the meeting packet. Chairman Lefstein stated that if a county has a deduction in reimbursement due to “others,” it is essential to know exactly what kind of cases they are including in that category. Chairman Lefstein recommended that Mike and Debby draw up instructions for the counties on how to use the “others” category, specifically for probation violations. It was also suggested that a further breakdown of the “others” category may be needed.
- 6) **Change of Next Meeting Date and Discussion of a Tentative May Meeting:** Chairman Lefstein indicated that he would be unable to attend the scheduled July 6<sup>th</sup> meeting, therefore, the meeting was rescheduled for July 13<sup>th</sup>. Furthermore, an additional meeting was tentatively set for May 4<sup>th</sup> at 2:00 p.m.
- 7) **Claims for 50% Reimbursement in Capital Cases:**

## INDIANA PUBLIC DEFENDER COMMISSION

Recommendations for Reimbursements in Capital Cases			
April 6, 2006			
COUNTY	DEFENDANT		TOTAL
Floyd	Wilson	*	\$842.87
Lake	Aki-Khuam (Williams)		\$14,735.08
	Britt		\$14,107.33
	Jeter		\$9,625.44
	Maust		\$14,198.12
	Roche		\$7,600.43
Madison	Baer		\$16,439.00
Marion	Allen		\$18,983.10
	Barker		\$9,025.43
	Holland		\$942.80
	Voss	*	\$4,535.65
Spencer	Ward		\$3,054.93
Tippecanoe	Gauvin	*	\$7,721.40
<b>TOTAL</b>			<b>\$121,811.58</b>

- \* Wilson                      Only \$1,685.74 [1/2 = \$842.87] timely filed w/n 120 d, org. rqst. \$4,734.09
- \* Voss                         Only \$9,271.50 [1/2 = \$4535.65] timely filed w/n 120 d, org. rqst. \$15,295.24
- \* Gauvin                     \$506 incorrectly billed; rmbrsmnt should be \$7,721.40, org. rqst. \$7,974.40

Rep. Foley made a motion to approve all Capital claims with the adjustments indicated; Ms. Jerrell seconded the motion, and the motion carried. Monica Foster abstained from voting.

8) **Claims for 40% Reimbursement in Non-Capital Cases:**

## INDIANA PUBLIC DEFENDER COMMISSION

### Recommendations for Reimbursements in Non-Capital Cases

4/6/2006

County	Penalty Factor	Period Covered	Total		Eligible Expenditure	Non-Compliant Attorneys/Total Attorneys and Quarters Reported	Reimbursement
			Expenditure	Adjustment			
ADAMS	0.00	10/1/05-12/31/05	\$0.00	\$0.00	\$0.00		\$0.00
ALLEN	0.00	10/1/05-12/31/05	\$620,113.25	\$14,500.00	\$605,613.25	5/33/yr	\$242,245.30
BENTON	0.00	10/1/05-12/31/05	\$9,133.45	\$408.96	\$8,724.49	1/3/1q	\$3,489.80
BLACKFORD	0.00	10/1/05-12/31/05	\$13,709.99	\$0.00	\$13,709.99	1/5/1q	\$5,484.00
CARROLL	0.00	10/1/05-12/31/05	\$23,807.83	\$6,327.54	\$17,480.29	1/2/1q	\$6,992.12
CLARK	0.00	10/1/05-12/31/05	\$99,598.84	\$34,731.01	\$64,867.83	1/12/2q	\$25,947.13
DECATUR	0.10	10/1/05-12/31/05	\$29,398.00	\$10,868.35	\$18,529.65	0	\$6,670.67
FAYETTE	0.00	10/1/05-12/31/05	\$63,009.25	\$20,301.41	\$42,707.84	0	\$17,083.14
FLOYD	0.00	10/1/05-12/31/05	\$174,669.52	\$8,771.40	\$165,898.12	1/7/yr	\$66,359.25
FOUNTAIN	0.00	10/1/05-12/31/05	\$21,649.02	\$3,592.65	\$18,056.37	3/3/1q	\$7,222.55
FULTON	0.00	10/1/05-12/31/05	\$53,703.67	\$15,234.67	\$38,469.00	2/14/yr	\$15,387.60
GRANT	0.00	10/1/05-12/31/05	\$217,411.00	\$30,444.29	\$186,966.71	8/13/2q	\$74,786.68
GREENE	0.00	10/1/05-12/31/05	\$56,078.37	\$2,195.44	\$53,882.93	0	\$21,553.17
HANCOCK	0.00	10/1/05-12/31/05	\$115,781.26	\$0.00	\$115,781.26	0	\$46,312.50
HENRY	0.00	10/1/05-12/31/05	\$92,240.83	\$38,956.21	\$53,284.62	4/5/2q	\$21,313.85
JASPER	1.00	10/1/05-12/31/05	\$43,770.80	\$0.00	\$43,770.80	2/4/1q	\$0.00
JAY	0.00	10/1/05-12/31/05	\$43,044.89	\$9,933.44	\$33,111.45	2/6/yr	\$13,244.58
JENNINGS	0.00	10/1/05-12/31/05	\$36,785.62	\$12,529.96	\$24,255.66	0	\$9,702.26
KNOX	0.00	10/1/05-12/31/05	\$53,047.83	\$24,666.10	\$28,381.73	1/16/1q	\$11,352.69
KOSCIUSKO	0.00	10/1/05-12/31/05	\$74,682.94	\$3,002.15	\$71,680.79	1/15/2q	\$28,672.32
LAKE	0.00	10/1/05-12/31/05	\$943,680.11	\$0.00	\$943,680.11	0	\$377,472.04
LAPORTE	0.00	10/1/05-12/31/05	\$123,348.45	\$22,121.57	\$101,226.88	2/8/2q	\$40,490.75
MADISON	0.00	10/1/05-12/31/05	\$378,870.30	\$133,752.20	\$245,118.10	6/24/3q	\$98,047.24
MARION	0.00	10/1/05-12/31/05	\$2,133,036.93	\$919,051.97	\$1,213,984.96	86/177/1q	\$485,593.98
MARTIN	0.00	10/1/05-12/31/05	\$0.00	\$0.00	\$0.00		\$0.00
MIAMI	1.00	10/1/05-12/31/05	\$67,874.67	\$0.00	\$67,874.67	4/5/yr	\$0.00
MONROE	0.00	10/1/05-12/31/05	\$252,142.96	\$69,451.25	\$182,691.71	7/10/yr	\$73,076.68
MONTGOMERY	0.10	10/1/05-12/31/05	\$85,088.18	\$32,614.29	\$52,473.89	0	\$18,890.60
NEWTON	0.00	10/1/05-12/31/05	\$0.00	\$0.00	\$0.00		\$0.00

NOBLE	0.00	10/1/05-12/31/05	\$58,276.07	\$5,641.10	\$52,634.97	3/4/yr	\$21,053.99
OHIO	0.00	10/1/05-12/31/05	\$10,761.00	\$4,304.40	\$6,456.60	1/4/2q	\$2,582.64
ORANGE	1.00	10/1/05-12/31/05	\$40,920.91	\$18,240.91	\$22,680.00	0	\$0.00
PARKE	0.00	10/1/05-12/31/05	\$15,360.42	\$0.00	\$15,360.42	0	\$6,144.17
PERRY	1.00	10/1/05-12/31/05	\$20,716.08	\$0.00	\$20,716.08	0	\$0.00
PIKE	1.00	10/1/05-12/31/05	\$45,253.85	\$0.00	\$45,253.85	0	\$0.00
PULASKI	0.00	10/1/05-12/31/05	\$45,272.93	\$3,892.24	\$41,380.69	2/13/2q	\$16,552.28
RUSH	0.00	10/1/05-12/31/05	\$36,508.07	\$11,330.09	\$25,177.98	1/6/1q	\$10,071.19
SCOTT	0.00	10/1/05-12/31/05	\$62,911.71	\$18,373.87	\$44,537.84	0	\$17,815.14
SHELBY	0.00	10/1/05-12/31/05	\$64,236.00	\$3,663.82	\$60,572.18	2/722q	\$24,228.87
SPENCER	0.00	10/1/05-12/31/05	\$17,792.30	\$3,894.75	\$13,897.55	1/5/2q	\$5,559.02
STEUBEN	0.10	10/1/05-12/31/05	\$63,170.65	\$17,892.18	\$45,278.47	0	\$16,300.25
SULLIVAN	0.00	10/1/05-12/31/05	\$17,921.04	\$8,680.54	\$9,240.50	0	\$3,696.20
SWITZERLAND	0.00	10/1/05-12/31/05	\$20,419.58	\$7,170.06	\$13,249.52	3/9/1q	\$5,299.81
TIPPECANOE	0.00	10/1/05-12/31/05	\$308,660.16	\$97,724.67	\$210,935.49	11/18/1q	\$84,374.20
UNION	0.00	10/1/05-12/31/05	\$0.00	\$0.00	\$0.00		\$0.00
VANDERBURGH	0.00	10/1/05-12/31/05	\$400,160.43	\$0.00	\$400,160.43	13/41/yr	\$160,064.17
VERMILLION	0.10	10/1/05-12/31/05	\$25,350.00	\$5,796.40	\$19,553.60	0	\$7,039.30
VIGO	0.00	10/1/05-12/31/05	\$242,064.99	\$75,172.40	\$166,892.59	0	\$66,757.04
WARREN	0.00	10/1/05-12/31/05	\$4,846.85	\$1,745.54	\$3,101.31	0	\$1,240.52
WASHINGTON	0.00	10/1/05-12/31/05	\$66,127.22	\$24,217.00	\$41,910.22	4/4/2q	\$16,764.09
WELLS	0.00	10/1/05-12/31/05	\$0.00	\$0.00	\$0.00		\$0.00
WHITE	0.00	10/1/05-12/31/05	\$0.00	\$0.00	\$0.00		\$0.00
WHITLEY	0.00	10/1/05-12/31/05	\$0.00	\$0.00	\$0.00		\$0.00
<b>TOTAL</b>			<b>\$7,392,408.22</b>	<b>\$1,721,194.83</b>	<b>\$5,671,213.39</b>	<b>179/29 counties</b>	<b>\$2,182,933.77</b>

## ADJUSTMENTS as of 03/07/06

Adams - No Claim

Allen - non-reimbursable Legal Representation for PD Attorneys

Benton - misdemeanors

Carroll - misdemeanors and non-reimbursable others

Clark - non-reimbursable others

Decatur - 10% LATE - misdemeanors

Fayette - misdemeanors and non-reimbursable others

Floyd - misdemeanors and non-reimbursable others

Fountain - misdemeanors and non-reimbursable others

Fulton - misdemeanors and non-reimbursable others

Grant - misdemeanors and non-reimbursable others

Greene - misdemeanors and non-reimbursable others

Hancock - misdemeanors

Henry - misdemeanors and non-reimbursable others

Jasper - -100% - no Request for Reimbursement, Attorney Information or Verifications

Jennings - misdemeanors and non-reimbursable others

Kosciusko - non-reimbursable others

Laporte - misdemeanors and non-reimbursable others  
Madison - misdemeanors and non-reimbursable others  
Marion - misdemeanors and non-reimbursable others  
Miami - 100% - continued non-compliance- No Chief PD.  
Martin - No Claim  
Monroe - misdemeanors and non-reimbursable others  
Montgomery - 10% LATE - misdemeanors and non-reimbursable others  
Newton - No Claim  
Noble - misdemeanors and non-reimbursable others  
Ohio - misdemeanors and non-reimbursable others  
Orange - 100% - No Attorney Information; Caseloads list law firms and attorneys  
Perry - 100% - incomplete Attorney Information; Caseloads list law firms and individuals  
Pike - 100% - No Attorney Information  
Pulaski - misdemeanors  
Rush - misdemeanors  
Scott - misdemeanors and non-reimbursable others  
Shelby - non-reimbursable others  
Spencer - misdemeanors and non-reimbursable others  
Steuben - 100% - blank Attorney Information - misdemeanors and non-reimbursable others  
Sullivan - misdemeanors  
Switzerland - misdemeanors and non-reimbursable others  
Tippecanoe - misdemeanors and non-reimbursable others  
Vanderburgh - misdemeanors and non-reimbursable others  
Vermillion - 10% LATE - misdemeanors and non-reimbursable others  
Vigo - misdemeanors and non-reimbursable others  
Warren - misdemeanors and non-reimbursable others  
Washington - misdemeanors and non-reimbursable others  
Wells - No Claim  
White - No Claim  
Whitley - No Claim

Several issues arose as a result of the recommendations for denying reimbursement for counties out of caseload compliance. Chairman Lefstein pointed out that the data indicated many of the counties had not provided caseloads for an entire year. Furthermore, only counties supplying numbers for an entire year can be analyzed for compliance with the standard. In addition, a debate developed regarding the part time contract attorney who also accepts cases as assigned counsel. After recalling that the caseload standards include contract as well as assigned counsel, Chairman Lefstein turned the discussion back to the topic of reimbursements. The Commission made a decision to hold off discussion of eight counties until the tentative May 4<sup>th</sup> meeting. This will give the Staff time to notify those counties and get a response regarding their caseload situations. Monica Foster made the motion to approve all Non-Capital claims (excluding the above mentioned eight counties), and Les Duvall seconded. The motion carried.

Regarding counties supplying less than four quarters, individual claims with penalty assessments were discussed. Chairman Lefstein indicated that those counties with individual problems needed individual letters. Ms. Jerrel mentioned that unless counties receive a letter describing what they have done wrong,

they will not understand the process. The Chairman suggested perhaps a form letter with a paragraph specific to that county. Mr. Landis voiced the IPD Council opinion that the Commission has always been seen as friends to help them get into compliance, not to punish them for failing, that the staff ought to be trying to figure out how to help counties succeed.

9) **Meeting of County Chief Public Defenders:** Chairman Lefstein expressed his interest in having a meeting of all Chief Public Defenders. Larry Landis advised that a meeting is most likely already scheduled, and he would inform the Commission of the date.

10) **The Next Regular Meeting is rescheduled for July 13<sup>th</sup>, 2005, at 3:00 p.m.**

11) **Meeting Adjournment:** The meeting adjourned at 6:00 p.m.

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**Norman Lefstein, Chairman**

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**Date**